

COBBETT'S WEEKLY POLITICAL REGISTER.

VOL. XIX. No. 17.] LONDON, WEDNESDAY, FEBRUARY 27, 1811. [Price 1s.

481]

THE LIBERTY OF THE PRESS.

In my two last Numbers, I opened what I intended to become a series of Articles upon this subject, which, as I have frequently before observed, and as I now repeat, and as every man of common sense will soon be convinced, is of far greater importance to the people of England than all the wars and negotiations and commerce in which the government is, or ever can be engaged. This is a matter that comes home to us. It is, in short, a question upon which depends all that is valuable in life.—At page 427 I explained the nature of that notable thing called an *INFORMATION EX OFFICIO*; at page 449, I continued the subject in an examination into what had been said about the *Liberty of the Press*; I endeavoured to shew what *was* and what *was not* Liberty of the Press, and, I think, I clearly demonstrated, that the Liberty of the Press is a mere name, and has no existence in reality, where any man cannot, without harm or risk to himself, publish the *truth* respecting the public character, conduct, and measures of men in public office, men paid for conducting or managing the affairs of the nation, let those men be whom they may, in what office they may, whether in the state, the law, the church, the army, or the navy, or any other department.—I should, in this Number, have gone on to shew the utility of this Liberty, and, indeed, its necessity for the purpose of preventing the people from suffering wrong; but, I as well as the public, have had my attention called off by a TRIAL, which has just taken place in the Court of King's Bench, and of which trial I am called upon to speak fully, not only by the great importance of the trial itself, but by the figure which *my name*, was by the Attorney General as well as by the defendants' Counsel, made to make in the proceedings.—The trial, to which I allude, is that of two Gentlemen of the name of HUNT, who, I believe, are brothers, and who are proprietors of a very excellent Weekly news-paper, called

[482

THE EXAMINER.—Against these Gentlemen an *INFORMATION EX OFFICIO* was laid by the Attorney General, GIBBS; and, on the 22nd instant they were brought to trial, having Mr. BROUGHAM, a member of Parliament, for their Counsel.—The prosecutor had called for a SPECIAL JURY; but, only TWO out of the twelve appearing, the other TEN were taken from the COMMON Jury List.—It may not be amiss to stop here for a moment, to explain the difference between a *Special* and a *Common Jury*.—A Special Jury consists of persons summoned for that special occasion. It is found thus: forty-eight men are NOMINATED BY THE MASTER OF THE CROWN OFFICE, of these each party strikes off *twelve*, which leaves *twenty-four*, and the *first twelve* who answer to their names when called on in Court are the jury to try the cause. So that the defendant as well as the plaintiff may strike out twelve, he may strike out twelve of the forty eight, ALL OF WHOM ARE NOMINATED BY THE MASTER OF THE CROWN OFFICE.—A COMMON Jury consists of the first twelve men who answer to their names when called on in Court, their names being taken PROMISCUOUSLY OUT OF A BALLOT BOX, and THE WHOLE HAVING BEEN WARNED PROMISCUOUSLY BY THE SHERIFF FOR THE TRIAL OF ALL CAUSES PROMISCUOUSLY.—When the whole of the special jury do not attend, the parties may move the Court to have a jury made up from the common jury list; and then the Clerk of the Court goes to the ballot box, and, taking out a ballot at a time, promiscuously, calls over names till he gets enough to make up the twelve men.—Thus it happened in the case of Messrs. HUNT, of whose Special Jury only TWO attended. The Jury was, then, composed as follows:

SPECIALS.

- 1 SAMUEL BISHOP, Upper Grafton Street.
- 2 GEORGE BAXTER, Church Terrace, Pan-
cras.

COMMON JURYMEN.

- 3 ROBERT MAYNARD, Glass-house Street, Oilman.
- 4 WALTER ROW, Gt. Marlborough Street, Stationer.
- 5 RICHARD BOLTON, Silver Street, Porkman.
- 6 JOHN RUTTON, Vigo Lane, Cutler.
- 7 HENRY PERKINS, Gt. Marlborough Street, Grocer.
- 8 WILLIAM LONSDALE, Broad Street, Cabinet Maker.
- 9 JOHN SEBROOK, Rupert Street, Cook.
- 10 THOMAS RIXON, Carnaby Street, Victualler.
- 11 JOHN NUNN, Gt. Crown Court, Victualler.
- 12 DAVID MILLER, Carnaby Market North, Baker.

I have, further on, inserted, from the Times News-paper, a report of this trial; and I beg leave to press upon the reader the necessity of reading it all through with great attention. I have there inserted the Jury list; but, it cannot be too often repeated. — The jury upon MY trial were more *punctual in their attendance*. ELEVEN out of the twelve were special jurymen, that is to say, from the list of the forty-eight, as I observed before, nominated by the Master of the Crown Office, so that I had but ONE common jurymen, namely, HENRY FAVRE of Pall Mall, Watchmaker. My List was as follows:

Thomas Rhodes,	Hampstead Road
John Davis,	Southampton Place
James Ellis,	Tottenham Ct. Road
John Richards,	Bayswater
Thomas Marsham,	Baker Street
Robert Heathcote,	High St. Marylebone
John Maud,	York Pl. Marylebone
George Baxter,	Church Ter. Pancras
Thomas Taylor,	Red Lion Square
David Deane,	St. John Street
Wm. Palmer,	Upper St. Islington
Henry Favre,	Pall Mall.

Having given these explanations, without which it would be impossible for many readers to understand this talk about *Special and Common juries*, or to account for a jury being made up with two sorts of men, I shall state further in the way of introduction, that it rests with the Attorney General, whether he shall call on common jurymen to make up a jury, or whether he shall put off the trial. He has the power of doing as he pleases in this respect. — When the Jury is ready, the Attorney General begins addressing them, and when he has

gone through his charge and called his witnesses, the defendant is heard. In all cases between man and man the parties stop here, unless the defendant calls witnesses. The prosecutor makes his speech, and the defendant answers him; then comes the Judge with his speech, or charge. But, the Attorney General has the *privilege* of having a speech *after* the defendant as well as *before* him, and, if he has assistants, they speak too. — Now, having the mode of the proceeding clearly before us, let us see *what* it was that Messrs. HUNT were tried for, and then let us examine a little into what was said upon this occasion, in which the reader will, I am sure, excuse me, if I discover an uncommon degree of interest, seeing that my *name*, and not only my name, but my conduct, my character, and my cause, were introduced and formed no inconsiderable topic in these proceedings, as, indeed, was very natural: for the publication now prosecuted manifestly grew out of that for which I was prosecuted, and in consequence of which prosecution I am now here. — Soon after my imprisonment, the editor of a most admirable country newspaper, called the "STAMFORD NEWS," published an article upon the subject of FLOGGING SOLDIERS, in which article he severely reprobated that mode of punishment. This article was copied by Messrs. HUNT into the EXAMINER; consequently they became *publishers* of it, and for their having so become they were prosecuted by the Attorney General in the way before described of an INFORMATION EX OFFICIO. — The part of the publication, for which, according to the report of the trial, Messrs. HUNT were prosecuted, was introduced by two *mottos*, as follows:

"ONE THOUSAND LASHES."

"The Aggressors were not dealt with as Buonaparté would have treated his refractory troops." — *Speech of the Attorney General.*

"Corporal Curtis was sentenced to receive ONE THOUSAND LASHES, but, after receiving two hundred, was, on his own petition, permitted to volunteer into a regiment on foreign service. William Clifford, a private in the 7th Royal Veteran Battalion, was lately sentenced to receive ONE THOUSAND LASHES, for repeatedly striking and kicking his superior officer. He underwent part of the sentence, by receiving

“ seven hundred and fifty lashes, at Canterbury, in presence of the whole garrison. —A Garrison Court Martial has been held on board the Metcalf transport, at Spithead, on some men of the 4th Regiment of Foot, for disrespectful behaviour to their officers. TWO THOUSAND SIX HUNDRED LASHES were to be inflicted among them.—Robert Chilman, a private in the Bearstead and Mallington regiment of *Local Militia*; who was lately tried by a Court Martial for disobedience of orders and mutinous and improper behaviour while the regiment was embodied, has been found guilty of all the charges, and sentenced to receive EIGHT HUNDRED LASHES, which are to be inflicted on him at Chatham, to which garrison he is to be marched for that purpose.—*London Newspapers.*—Such were the two mottoes to the paper, which are of great consequence, because, as the reader will see, the Attorney General traced, through these mottoes, the continuation of the publication for which I was prosecuted.—The passage for which Messrs. HUNT were prosecuted was, according to the report of the trial, as follows, and I beg the reader to pay great attention to it, and to compare it with the article, for which I was prosecuted. This is of great consequence, not only to me, but to the public at large, to the cause of truth, the cause of freedom, the cause of justice.—“The Attorney General said what was very true;—these aggressors have certainly not been dealt with as Buonaparté would have treated his refractory troops;—nor indeed as refractory troops would be treated in any civilized country whatever, save and except only this country.—Here alone, in this land of liberty, in this age of refinement—by a people who, with their usual consistency, have been in the habit of reproaching their neighbours with the cruelty of their punishment,—is still inflicted a species of torture, at least as exquisite as any that was ever devised by the infernal ingenuity of the Inquisition.—No, as the Attorney General justly says, Buonaparté does not treat his refractory troops in this manner: there is not a man in his ranks whose back is seamed with the lacerating cat-o’-nine-tails;—his soldiers have never yet been brought up to view one of their comrades stripped naked,—his limbs tied with ropes to a triangular machine,—his back torn to the bone by

“ the merciless cutting whipcord, applied by persons who relieve each other at short intervals, that they may bring the full unexhausted strength of a man to the work of scourging. Buonaparté’s soldiers have never yet with tingling ears listened to the piercing screams of a human creature so tortured: they have never seen the blood oozing from his rent flesh; they have never beheld a surgeon with dubious look, pressing the agonized victim’s pulse, and calmly calculating to an odd blow, how far suffering may be extended, until in its extremity it encroach upon life. In short, Buonaparté’s soldiers cannot form any notion of that most heart-rending of all exhibitions on this side hell,—an *English Military flogging.*—Let it not be supposed that we intend these remarks to excite a vague and indiscriminating sentiment against punishment by military law:—no; when it is considered that discipline forms the soul of an army, without which it would at once degenerate into a mob;—when the description of persons which compose the body of what is called an army, and the situations in which it is frequently placed, are also taken into account, it will, we are afraid, appear but too evident, that the military code must still be kept distinct from the civil, and distinguished by greater promptitude and severity.—Buonaparté is no favourite of ours, God wot—but if we come to balance accounts with him on this particular head, let us see how matters will stand. He recruits his ranks by force—so do we. We flog those whom we have forced—he does not. It may be said he punishes them in some manner;—that is very true. He imprisons his refractory troops—occasionally in chains—and in aggravated cases he puts them to death. But any of these severities is preferable to tying a human creature up like a dog, and cutting his flesh to pieces with whipcord. Who would not go to prison for two years, or indeed for almost any term, rather than bear the exquisite, the almost insupportable torment, occasioned by the infliction of seven hundred or a thousand lashes?—Death is mercy compared with such sufferings. Besides, what is a man good for after he has had the cat-o’-nine-tails across his back? Can he ever again hold up his head among his fellows? One of the poor wretches ex-

"cuted at Lincoln last Friday, it is stated,
 "had been *severely punished* in some regi-
 "ment. The probability is that to this
 "odious, ignominious flogging, may be
 "traced his sad end; and it cannot be
 "doubted that he found the gallows less
 "cruel than the halberts. Surely, then,
 "the Attorney General ought not to
 "stroke his chin with such complacency,
 "when he refers to the manner in which
 "Buonaparté treats his soldiers. We
 "despise and detest those who would tell
 "us that there is as much liberty now en-
 "joyed in France as there is left in this
 "country. We give all credit to the
 "wishes of some of our great men; yet
 "while any thing remains to us in the
 "shape of free discussion, it is impossible
 "that we should sink into the abject
 "slavery in which the French people are
 "plunged. But although we do not envy
 "the general condition of Buonaparte's
 "subjects, we really (and we speak the
 "honest conviction of our hearts) see
 "nothing peculiarly pitiable in the lot of
 "his soldiers when compared with that of
 "our own. Were we called upon to
 "make our election between the services,
 "the *whip-cord* would at once decide us.
 "No advantage whatever can compensate
 "for, or render tolerable, to a mind but
 "one degree removed from brutality, a
 "liability to be lashed like a beast. It is
 "idle to talk about rendering the situa-
 "tion of a British soldier pleasant to him-
 "self, or desirable, far less honourable, in
 "the estimation of others, while the whip
 "is held over his head—and over his head
 "alone, for in no country in Europe (with
 "the exception, perhaps, of Russia, which
 "is yet in a state of barbarity) is the mili-
 "tary character so degraded.—We have
 "heard of an army of slaves, which had
 "bravely withstood the *swords* of their
 "masters being defeated and dispersed by
 "the bare shaking of the *instrument of*
 "*flagellation* in their faces. This brought
 "so forcibly to their minds their former
 "state of servitude and disgrace, that
 "every honourable impulse at once for-
 "sook their bosoms, and they betook
 "themselves to flight and to howling.
 "We entertain no anxiety about the cha-
 "racter of our countrymen in Portugal,
 "when we contemplate their meeting the
 "*bayonets* of Massena's troops,—but we
 "must own that we should tremble for
 "the result, were the French General to
 "dispatch against them a few hundred
 "drummers, each brandishing a *cat-o'-nine-*

tails."—Now, reader, if you turn to the
 Attorney-General's Speech, you will find
 him saying, that this publication, or *libel*,
 as he called it, was a *continuation* of that,
 for which I had "*received the sentence of*
 the Court;" yes, the sentence of TWO
 YEARS IMPRISONMENT IN NEW-
 GATE, A FINE OF A THOUSAND
 POUNDS TO THE KING, AND BAIL
 FOR KEEPING THE PEACE FOR
 SEVEN YEARS, IN 3,000 POUNDS
 MYSELF, AND TWO OTHERS IN
 1,000 POUNDS EACH. Here are NINE
 YEARS in all, and, if the imprisonment
 were so to impair my mind as to disable
 me from supporting a large family, and,
 at the same time, retaining the means of
 indemnifying my bail, I must be IM-
 PRISONED FOR LIFE.—Why did not
 the Attorney-General state this? Why did
 he not, since he thought proper to rip up
 my name; why did he not tell the jury of
 this, and tell them besides, that NINE
 YEARS is two years beyond the calculation
 of the average life of man, even the most
 hale and in the prime of his life, unaccom-
 panied with any of the dangers to be ap-
 prehended from imprisonment and trouble
 of mind? Why did he not tell the Jury
 all this?—He told them very truly,
 however, that this was a *continuation* of my
 publication; for, it really was so; and,
 he further told them truly, that I took up
 a *particular instance* of military punish-
 ment, while the present publishers took a
 general view of the matter, and *passed a*
general condemnation on the whole system of
flogging. This was very true, and I wonder
 how MR. BROUGHAM could think of con-
 troverting it; I wonder how he could
 think of representing my publication as
 better calculated to excite discontent in
 the army than this.—My publication re-
 ferred to a flogging of certain persons
 in the LOCAL MILITIA at Ely, and not to
 the flogging system, or practice, *generally*,
 upon which I offered *at that time* my opi-
 nion at all.—My complaint was, at that
 time, not that soldiers generally were
 flogged, not that flogging was practised,
 not that it was this or that to tie men up
 and whip them with *cats-o'-nine tails*; in
 short, there was not a word said or in-
 sinuated, in that particular publication,
against the English military punishments, but
 merely against the infliction of punish-
 ment in that particular case, where the
 cause was a disobedience of orders in the
 Local Militia arising from a quarrel about
 their pay.—But, besides this, there was

another peculiarity in my case, and that was the *employment of German Troops* to cause this punishment to be inflicted; and, surely, that circumstance must weigh a great deal in estimating the feelings of the man who was commenting upon the transaction.—I did indeed, in my defence, say, that I disapproved of this mode of punishment, as I had often done before, and not the less so for having myself seen a great deal of it inflicted; but, upon the occasion referred to, I expressed no such opinion; and, at the utmost, all that could be gathered from my publication was, that I disapproved of such punishment being inflicted upon *Local Militia* men, and that *under the superintendence of German Troops*.—Then, as to the comparison between the punishments in our army and those in the army of the Emperor of France, how does Mr. BROUGHAM make it out, that this article of his clients was less likely to excite discontent than mine was? What did I say? Why, merely this, that I hoped that, while these things were (namely the things above mentioned), I should hear no more about the manner in which Napoleon treated his conscripts. But, here, in this article of Messrs. HUNT, the comparison is fully gone into, and I leave the candid reader to judge, whether the French system is not *PREFERRED* to the English. It certainly is; but, then, as Mr. BROUGHAM very judiciously shewed, that might be done without any evil *intention*; aye, and without any evil *effect*, as was very well illustrated by an appeal to the publication of Sir Robert Wilson and that of Sir John Stuart.—If Mr. BROUGHAM had said, that there was “*no comparison*” between this article and mine in point of *force* and *effect*; if he had said, that “*they were as widely different as light and darkness*” in point of talent; if he had said, that this was a most ably and correctly written article, while mine was a mere hasty effusion, a mere burst of honest indignation; if he had said this, I should have been the last man in the world to find fault; but it was to do me great injustice, and which was of much more importance, it was to do great injustice to the cause of truth and freedom and humanity, to say, or to insinuate, that my publication was of a criminal cast while this was not; and, of course, to rob me of the effect, which an acquittal of his clients would naturally tend to produce.—I do not accuse

him of an *intention* to do this; but, certainly such was the natural tendency of what he is reported to have said.—Let us now, (deferring till another time Mr. BROUGHAM's lawyer-like attack upon what he called the *licentiousness* of the press), take a view of some of the arguments made use of by the Attorney General on this occasion.—He said, that the defendant had collected together an account of *all* the military punishments and represented them in a mass. He then said, that our militia alone amounted to 270,000 men, besides regular troops; and then he asked, if it was “*fair to pick out all the punishments which had been sentenced on the soldiery, without at the same time stating the number of offenders who had been pardoned, and the number of persons subject to commit the offence.*” —In the first place, does the Attorney General mean to say, that the above two mottoes did really contain an account of *all* the punishments inflicted upon the soldiers in England? And, does he suppose, that *the number of men liable to such punishments being great* can, in the mind of any man, make the punishment itself *less* objectionable? It was the *sort* of punishment that the defendant inveighed against, and, was it to show that he was wrong, to show that he was criminal, was this effect likely to be produced by stating that some hundreds of thousands of our countrymen were liable to this punishment?—If, indeed, the defendant had actually collected a report of *all* the military punishments inflicted in any given time, then this reasoning would have been worth something. But, was it not utterly impossible; does not all the world know that it was impossible for the defendant to make any such collection; and is it not well known, that a motion made in parliament by Sir FRANCIS BURDETT, *for the purpose of obtaining an account of them all*, within a certain time, was rejected?—No; it was the *kind* of punishment that was the object of censure with the defendant, as it had been with Sir Robert Wilson, and had he not as good a right to find fault with it as Sir Robert Wilson had? But, at any rate, it is, I think, consummately absurd to argue, that the punishment is more tolerable because *so many* persons are liable to it. With full as much reason might it be argued, that such and such punishments on publishers and writers ought to excite the less feeling for them, because there are *so many* of them liable to these punish-

ments. At this rate, the people of a numerous nation ought to think nothing of punishments which would be deemed horribly savage in petty states.—Why were the jury reminded, why was it “necessary to inform the jury, that there “were Sixty different news-papers published in London?” What was this to the matter? How did it apply? Were the defendants either more or less guilty for that? And, if it was meant to convey the idea, that the defendant had all these papers to pick his list of punishments out of, of what consequence was that? How was that to augment the mass of his collection, unless he stated the same facts sixty times over, or, at least, more than once? — Indeed, this piece of knowledge, communicated to the jury in so marked a manner, might lead them to compare the number of Informations Ex Officio for Libel with the number of news papers; but, what of that? How was that to affect Messrs. HUNT? And, at any rate, the same course of reasoning, if worth a straw, will tell pretty well, I believe, on the other side; for, why should not Messrs. HUNT have said: “we have published several “hundreds of EXAMINERS, and only this one “passage (not making the 20th part of “one Examiner) can be even called “a libel, and will you, therefore, find us “guilty?” — The Attorney General contended, that the defendants’ publication was calculated to excite discontent and to produce mutiny in the army. — Now, supposing it likely for the soldiers to read this publication, why should it have this tendency? Either the description of the flogging, given by the defendants, was true or it was false. If the former, was it likely, nay was it possible, for any writing, however eloquent (and very eloquent this writing was) to make the soldiers dislike the thing more than, in case of its existence, they must already dislike it? The tendency was, the Attorney General said, “to alienate the soldier’s love of his profession;” but, if the writing stated truths, was it possible for it to produce this effect? Was it possible for the pen to produce an effect which the cat-o’-nine tails had failed to produce? Was it possible for the man, who remained attached to his profession, after feeling the cat-o’-nine tails or seeing it at work upon the backs of his comrades; was it possible for any pen or any tongue to alienate the “love of such a man from “his profession?” And, if the description of flogging, given by the defendants, was

false, the soldiers upon reading it would know it to be false; they would, at least, think that the writer was speaking of some corps to which they did not belong; and, of course, instead of goading them on to mutiny, such a writing would tend to make them contented and happy, and to increase their “love for their profession.” The same reasoning applies to those who are likely to become soldiers; this reasoning was well put by Mr. BROUGHAM, in which, however, I must say, that he did no more than repeat, with more eloquence, perhaps, precisely what I had said in my defence, though it was not then so fortunate in being reported in the news-papers, nor, which was more material, in producing conviction in the minds of the jury. — It appears to me to be a most groundless fear, that the soldiers are to be stimulated to discontent and mutiny by descriptions of the treatment they receive. If, indeed, any one were to hold forth to them the prospect of bettering their condition by resisting the commands of their officers, it might reasonably be said, that he called upon them to mutiny, which is no other than a resistance of the commands of their superiors. Or, if any man were to tell them, that there was an intention to use them ill; or, that, in case of their being sent upon such or such a service they would be exposed to great and unnecessary sufferings, as was done by the MORNING POST in the publication, for which that paper was informed against by SIR ARTHUR PIGOT, and which case I referred to in my defence. Here are manifest incitements to mutiny; and they might well be expected to produce such an effect; to tell soldiers what they may get by resistance, or what they may avoid by it may be very dangerous; but, to tell them what is; to tell them how they are treated; to suppose that this can be productive of mutiny is, to me, the strangest idea, the most “chimerical fear,” as Mr. Brougham called it, that ever entered the mind of man. When I am well is it in the power of any human eloquence to persuade me that I am sick? And when I feel, or, if I were to feel, the torture of the gout or the stone, would it be in the power of any human eloquence to persuade me that I was well? — Therefore, though a publication relating to the flogging of the soldiers, may be very false and very malicious, it seems to me quite impossible, that it can tend to produce either mutiny or discontent. — Even Sir ROBERT WIL-

son seems to have gone a little too far in this way for the Attorney General, who is reported to have observed, that it might be a question, whether it was prudent in the gallant officer to enlarge upon "the corporal punishment of the soldiery," that is to say the carcass punishment, or flogging of them "in such ardent and glowing language." But why not? if true, as was observed before, the pen could not possibly speak more home to the soul than the cat-o'-nine tails; and, if false, though the falshood would be very base, it would not be believed by the soldiers, and would, of course make no evil impression upon them.

—But, for *what reason* was Sir ROBERT WILSON, or any other knight or any lord or any body else to be allowed to go farther in this way than the Messrs. HUNT? Why were they to be debarred from that use of the press that was made by others? "It was truly laughable," the Attorney General said, to rank Sir Robert Wilson and "Brigadier General Stuart with the Proprietors of the Examiner." But it was not rank that Mr. Brougham had been talking of, it was right; not military right, but civil right, of which, I hope, I may say, that the Messrs. HUNT have as great a portion as the two "gallant officers," and as to powers of writing they have a million times as much. Had they possessed no more powers of this sort, than the two "gallant officers," I am strongly disposed to believe, that they would never have been honoured with the attention of the Attorney General. Indeed he said, that he had never till that moment, seen either of the pamphlets of the two "gallant officers," which I can readily believe; but, what is that to the purpose? Were they to be looked upon as less criminal than the Messrs. HUNT because they had not the gift of writing in such a way as to induce the public to read what they wrote. The intention (which constitutes a libel) must have been the same; for, of all the authors I ever met with, and they have not been few in number, I never yet met with one, who was not smitten with the folly of hoping that *all the world* would be eager to read what he wrote; and, as a woman is seldom offended at praise bestowed on her beauty even by the dirty and deformed creature that clears away the mud from the track for her feet, so have I never known an author disdain the encomiums of any reader, however low in rank or in mind; therefore, if these gallant authors

have not been read through the ranks of the army, the Attorney General may safely take the will for the deed.—Besides, did it escape so acute a person (even *he* will read that phrase with complacency;) did it escape him (if it did it should not have escaped Mr. Brougham), that there was, if possible, *less* reason to suspect Messrs. HUNT of *improper motives* than the two officers. The Attorney General said, that "the Officers *could have no improper object in view*. Not so the "defendants." What *proof* was there of this, either positive or presumptive? Positive proof there was none; and, as to the presumptive proof, as to any conclusion to be drawn from probabilities, the leaning is decidedly in favour of Messrs. HUNT. For, it is possible to suppose the existence of an improper object in the officers. Mind, *I do not suppose it*; I firmly believe, that they were actuated by a sincere desire to do good to the military service and to the country. But it is, in them, possible to suppose an improper object; for, any man may easily conceive how much their writings were calculated to gain them the hearts of the soldiers, and to give them, in the service, a stock of love and attachment greater than that possessed by their brother officers, which, to carry the supposition a little further, they might possibly make use of to their own private advantage and aggrandisement. But, with Messrs. HUNT (as with myself), there could be no such object in view; there could be nothing of a selfish kind. All the world knows that soldiers, or "the soldiery," are not our readers, except, perhaps, a few of the Commissioned Officers, who if they did not see good reason to approve of what we said, would naturally be our readers no longer. How, then, would this Gentleman have made it out, that the two officers *could have no improper object*, and that Messrs. HUNT *must have had such object*? The act was of exactly the same sort. There was not the least difference in it in any part. The Officers as well as the Public Writers expressed *their disapprobation of flogging*, and both parties appealed to the *military punishments of the French*, drawing a comparison *disadvantageous to the English system*. Why, then, let me ask, should it be presumed, that the object of Messrs. HUNT was *bad*, while that of the officers was *good*? It is easy to assert that this was so; but where was the *proof*, where was the *reason* on which to ground such an assertion?—Here I

must stop for the present, lest I should not have room for the whole of the proceedings upon this important TRIAL, to which I again beg leave to solicit the reader's most serious attention.—There has appeared in the COURIER of last night, a most atrocious article upon the subject, but that I cannot notice it till my next. It plainly, and in so many words, says, that "*the soldiers are out of the pale of the English Constitution;*" and says that no man ought to be suffered to endeavour to soften their lot. Never, I believe, was any thing so outrageously insolent and wicked as this published in England, or any where else.

W^m. COBBETT.

State Prison, Newgate, Tuesday,
February 26, 1811.

LIBEL CASE.

FLOGGING SOLDIERS.

The KING against MESSRS. HUNT.

Trial before the Chief Justice, Lord Ellenborough, in the Court of King's Bench, at Westminster, on Friday, 22 Feb. 1811, on an EX OFFICIO Information, laid by the Attorney General, GIBBS, against Messrs. Hunt, the Proprietors and one of the Printers of a Weekly Newspaper, called the Examiner.

A SPECIAL JURY had been called for by the Prosecutor, and were, of course, summoned; but, only TWO of them appeared.—Of course the Trial was obliged to be put off, or TEN men were to be taken from the COMMON jurors.—The Attorney General chose this, and thus the Jury was formed.

SPECIALS.

- 1 SAMUEL BISHOP, Upper Grafton Street.
- 2 GEORGE BAXTER, Church Terrace, Pancras.

COMMON JURYMEN.

- 3 ROBERT MAYNARD, Glass-house Street, Oilman.
- 4 WALTER ROW, Gt. Marlborough Street, Stationer.
- 5 RICHARD BOLTON, Silver Street, Porkman.
- 6 JOHN RUTTON, Vigo Lane, Cutler.
- 7 HENRY PERKINS, Gt. Marlborough Street, Grocer.
- 8 WILLIAM LONSDALE, Broad Street, Cabinet Maker.
- 9 JOHN SEBROOK, Rupert Street, Cook.
- 10 THOMAS RIXON, Carnaby Street, Victualler.
- 11 JOHN NUNN, Gt. Crown Court, Victualler.

12 DAVID MILLER, Carnaby Market North, Baker.

Mr. RICHARDSON opened the pleadings, by stating, that this was a criminal Information filed against John Hunt and Leigh Hunt, the printer, and two of the proprietors of the Examiner, Sunday newspaper, for a seditious libel, to which the defendants had pleaded Not Guilty.

The ATTORNEY-GENERAL then rose, and said, that he had thought it incumbent on him to prosecute the defendants for a Libel; the tendency of which was not only to excite the disaffection of the soldiery, by representing that they were treated with improper and excessive severity, but (what was still more mischievous) to represent the treatment of Buonaparté towards his troops, and the means which were used to enlist them, as infinitely preferable to the system employed in Great Britain. The effect of this libel was obviously to excite discontent and dissatisfaction in the minds of the soldiers who had already entered the British service, and to disincline others from entering into that service. How fatal such efforts were to the country, it was unnecessary for the Attorney-General to state. The defendants had chosen to select for their motto, what they supposed him to have said upon the occasion of a former trial of this nature, when it became necessary for the Attorney-general to prosecute Mr. Cobbett for animadversions of extreme severity and injustice, upon an occasion of a mutiny in the Local Militia, which was punished by a Court-martial, with a sentence of lashes, the infliction of part of which was remitted. The defendant on that occasion chose for his motto, or text, a statement of the circumstance from the newspapers; to which he subjoined a libel of extreme malignity, upbraiding those who endeavoured to suppress the mutiny, and insulting those who stood by to see it punished. On that occasion, too, the defendants took an opportunity of speaking of the manner in which Buonaparté was supposed to recruit his army, taunting and reviling those who talked of his severity, and telling them it was ridiculous to animadvert on his cruelty while so much greater existed in our own army. After observing in that case upon the mild sentence and still milder infliction which attended the mutiny of those men who had risen upon their officers, the Attorney-General supposed he did use the sentence which the present de-

defendants had selected for the motto of their libel—"The aggressors were not dealt with as Buonaparté would have treated his refractory troops." Speech of the Attorney-General. He repeated this assertion now; he verily believed it: in Buonaparté's army the offenders would not have escaped with their lives. Mr. Cobbett having been convicted for this libel, the present publishers took up the subject; and, whereas Mr. Cobbett took up a particular instance of military punishment upon which to comment, the present writers took all they could collect from all the papers, and presented them in a mass in the most aggravating manner, evidently for the purpose of inflaming the minds of the soldiers, rendering them disaffected to the service, and subjecting the public to all those calamities which would follow the effect which this publication was calculated to produce. The Attorney-General assumed it as a fact, that wherever there was an army, it was absolutely necessary that that army should be governed by laws which were not applicable to the rest of society. In families, it was necessary that children should be obedient to their parents, servants to their master; and where this obedience did not obtain, the most serious domestic evils were found to ensue. But there the evil ended. In the army it was otherwise. If once the army was let loose from its code of laws, not only would follow the destruction of the military system, *but the downfall of the whole state.* It was unnecessary to state the consequences which would ensue. It could not be said, that this publication had not a tendency to these consequences; for what could tend to that end more directly than to represent the military code as cruel and oppressive, and administered with unnecessary severity? Could such a representation as this be exceeded in atrocity? Yes, it could. The English army could be brought into comparison with the French army, and the preference given to the latter. Having thus opened the principles, upon which the Attorney-General was sure the Jury would decide this publication to be a libel, he proceeded to read and comment upon it as follows:—**ONE THOUSAND LASHES!!—** (*From the Stamford News.*)—"The aggressors were not dealt with as Buonaparté would have treated his refractory troops."—*Speech of the Attorney-General.*

This was the first motto, and implicated the libel which followed it so closely, that

the Attorney-General took it to be a continuance of that libel for which Mr. Cobbett had received the sentence of the Court. The second motto consisted of the reports of military punishments, collected from all the London newspapers (of which it might be necessary to inform some of the Jury, that 60 different ones were published every week) and represented in one mass. The number of troops subject to these punishments consisted of 180,000 local militia, and 90,000 original militia, in all 270,000, besides all the regular troops in the service; and was it fair to pick out all the punishments which had been sentenced on the soldiery, without reporting, at the same time, the number of offenders who had been pardoned, and the number of persons subject to commit the offence? Was this the course of proceeding of a fair discussor of the policy of military flogging?—"Corporal Curtis was sentenced to receive **ONE THOUSAND LASHES**; but, *after receiving two hundred*, was, on his own petition, permitted to volunteer into a regiment on foreign service.—William Clifford, a private in the 7th Royal Veteran Battalion, was lately sentenced to receive **ONE THOUSAND LASHES**, for repeatedly striking and kicking his superior officer. He underwent part of the sentence, by *receiving seven hundred and fifty lashes*, at Canterbury, in presence of the whole garrison.—A Garrison Court-martial has been held on board the Metcalf transport, at Spithead, on some men of the 4th Regiment of Foot, for disrespectful behaviour to their officers. **TWO THOUSAND SIX HUNDRED LASHES** were to be inflicted among them.—Robert Chilman, a private in the Bearstead and Mallington regiment of *Local Militia*, who was lately tried by a Court-martial for disobedience of orders, and mutinous and improper behaviour while the regiment was embodied, has been found guilty of all the charges, and sentenced to receive **EIGHT HUNDRED LASHES**, which are to be inflicted on him at Chatham, to which garrison he is to be marched for that purpose."—*London Newspapers.*—This was the second motto; and now the libel commences at once:—"The Attorney-General said what was very true;—these aggressors have certainly not been dealt with as Buonaparté would have treated his refractory troops;—nor indeed as refractory troops would have been treated

" in any civilized country whatever, save
 " and except only this country.—Here
 " alone, in this land of liberty, in this age
 " of refinement—by a people who, with
 " their usual consistency, have been in the
 " habit of reproaching their neighbours
 " with the cruelty of their punishments—
 " is still inflicted a species of *torture*, at least
 " as exquisite as any that was ever devised
 " by the infernal ingenuity of the Inqui-
 " sition.—No, as the Attorney General
 " justly says, Buonaparté does *not* treat his
 " refractory troops in this manner; there
 " is not a man in his ranks whose back is
 " seamed with the lacerating cat-o'-nine-
 " tails;—his soldiers have never yet been
 " brought up to view one of their com-
 " rades stripped naked,—his limbs tied
 " with ropes to a triangular machine,—his
 " back torn to the bone by the merciless
 " cutting whipcord, applied by persons
 " who relieve each other at short intervals,
 " that they may bring the full unexhausted
 " strength of a man to the work of
 " scourging. Buonaparté's soldiers have
 " never yet, with tingling ears, listened to
 " the piercing screams of a human crea-
 " ture so tortured: they have never seen
 " the blood oozing from his rent flesh;—
 " they have never beheld a surgeon, with
 " dubious look, pressing the agonized
 " victim's pulse, and calmly calculating,
 " to an odd blow, how far suffering may
 " be extended, until, in its extremity, it
 " encroach upon life. In short, Buona-
 " parté's soldiers cannot form any notion
 " of that most heart-rending of all exhi-
 " bitions on this side hell—*an English Mi-
 " litary Flogging.*" Now, why, in his out-
 " set, did this writer compare the treatment
 " of our soldiers with that of Buonaparté's?
 " Did he mean to recommend our govern-
 " ment to abolish the present military code,
 " and substitute that of Buonaparté? Did
 " our system drag men from their homes,
 " and oblige them to enter the army against
 " their will, as that of Buonaparté does?
 " If it did, the Attorney-General could not
 " have dared to stand up this day against
 " any publication which execrated such a
 " plan. Military punishments were severe:
 " but was it the interest of the inflictors of
 " them to render them more so than was
 " necessary? And was it not necessary to
 " insure prompt obedience, by prompt
 " justice than could be sought for in any
 " other than the military code? The whole
 " of the above paragraph was comparison
 " with the French; and the obvious ten-
 " dency of it was to elevate their conduct,

and to debase our own.—" Let it not be
 " supposed that we intend these remarks
 " to excite a vague and indiscriminating
 " sentiment against punishment by mili-
 " tary law:—no: when it is considered
 " that discipline forms the soul of an army,
 " without which it would at once dege-
 " nerate into a mob; when the description
 " of persons which compose the body of
 " what is called an army, and the situations
 " in which it is frequently placed, are
 " also taken into account, it will, we are
 " afraid, appear but too evident, that the
 " military code must still be kept distinct
 " from the civil, and distinguished by
 " greater promptitude and severity.—Buo-
 " naparté is no favourite of ours, God wot;
 " but if we come to balance accounts
 " with him on this particular head, let us
 " see how matters will stand."—The At-
 " torney-General then pointed out with what
 " extreme reluctance the enormities of the
 " French system were mentioned. " He
 " recruits his ranks by force,—so do we:"
 " as if by the same degree of force! The
 " imprisonments and deaths to which he has
 " recourse were slightly passed over.—
 " We *flog* those whom we have forced—
 " he does not. It may be said he punishes
 " them in some manner;—that is very
 " true. He imprisons his refractory troops,
 " occasionally, in chains; and in aggra-
 " vated cases, he puts them to death. But
 " any of these severities is preferable to
 " tying a human creature up like a dog,
 " and cutting his flesh to pieces with whip-
 " cord. Who would not go to prison for
 " two years," [as Buonaparté sent his mi-
 " litary offenders, the Attorney General
 " supposed] " or indeed for almost any term,
 " rather than bear the exquisite, the al-
 " most insupportable torment, occasioned
 " by the infliction of seven hundred or a
 " thousand lashes? Death is mercy com-
 " pared with such sufferings. Besides,
 " what is a man good for after he has had
 " the cat-o'-nine-tails across his back?
 " Can he ever again hold up his head
 " among his fellows? One of the poor
 " wretches executed at Lincoln last Fri-
 " day, it is stated, had been *severely pu-
 " nished* in some regiment. The proba-
 " bility is, that to this odious, ignominious
 " flogging, may be traced his sad end;
 " and it cannot be doubted that he found
 " the gallows less cruel than the halberts.
 " Surely, then, the Attorney-General ought
 " not to stroke his chin with such com-
 " placency, when he refers to the manner
 " in which Buonaparté treats his soldiers.

" We despise and detest those who would tell us that there is as much liberty now enjoyed in France as there is left in this country. We give all credit to the wishes of some of our great men ; yet while any thing remains to us in the shape of free discussion, it is impossible that we should sink into the abject slavery in which the French people are plunged. But although we do not envy the general condition of Buonaparté's subjects, we really (and we speak the honest conviction of our hearts) see nothing peculiarly pitiable in the lot of his soldiers when compared with that of our own. Were we called upon to make our election between the services, the *whipcord* would at once decide us.—No advantage whatever can compensate for, or render tolerable to a mind but one degree removed from brutality, a liability to be lashed like a beast. It is idle to talk about rendering the situation of a British soldier pleasant to himself, or desirable, far less honourable, in the estimation of others, while the whip is held over his head—and over his head alone, for in no country in Europe (with the exception, perhaps, of Russia, which is yet in a state of barbarity), is the military character so degraded. We have heard of an army of slaves, which had bravely withstood the swords of their masters, being defeated and dispersed by the bare shaking of the *instrument of flagellation* in their faces. This brought so forcibly to their minds their former state of servitude and disgrace, that every honourable impulse at once forsook their bosoms, and they betook themselves to flight and to howling. We entertain no anxiety about the character of our countrymen in Portugal, when we contemplate their meeting the bayonets of Massena's troops ; but we must own that we should tremble for the result, were the French General to dispatch against them a few hundred drummers, each brandishing a *cat-o'-nine-tails*."—If there were to be made any alteration in our military code, it must be by increasing the number of those offences punishable by death ; and if a proposal were made to this effect, the Attorney-general should like to know in what terms of severity the writer of this libel would attack the proposer of such a measure. The writer struck his balance between the supposed hardships of our army and the real ones of Buonaparté's, and gave the final pre-

ference to the Corsican. Could the jury hear this without indignation ? Was it possible not to see that the tendency of the libel was to alienate the soldier's love of his profession, and disincline every body else from embracing it ? Could any thing be more pointedly mischievous ? The whole libel was equally offensive : every sentence had the same tendency. Of this tendency there could be no doubt ; and the jury would therefore hear from his Lordship that this was a most mischievous and seditious libel.

MR. BROUGHAM then addressed the Court and the Jury on behalf of the defendants, to the following effect :—" In rising to support the cause of these defendants, I am abundantly sensible of the difficulties under which I labour, not merely on the score of unequal talents and learning, or on account of the high influence of the office of the Attorney-General ; not merely because I am defending the cause of those prosecuted by the Crown, a circumstance which throws an odium upon defendants, in whose favour, in civil prosecutions, the presumption is ; but because this charge of libel is brought forward at a time when the licentiousness of the press has reached a height, which it certainly has not attained at any former time even in this country ; a licentiousness, whereby every boundary is removed, and every obstacle overwhelmed. I will not say that no character is so exalted, because it is not of the attacks upon exalted characters that I complain ; but I will say that no character is so humble and so private, as to have escaped the libels of those who seek to gratify an idle curiosity, or to flatter a still less excusable malignity. To point out as an object for the tongue of slander the man who is endeavouring to enter into private life, is with some the road to popularity—with hundreds the means of a base subsistence. It is unnecessary for me to state the nature, consequences, and grounds of this licentiousness of the press ; and I am far from saying there is nothing to extenuate it. It arises in a great degree from that love of publicity with which many are seized, to a degree which leads them to value their existence only in proportion as it is passed before the gaze of the world, and to care not what they do, so as they be but talked of. In this particular the public at least are liberal, and never fail to reward him who panders

to their gluttonous appetite. The consequences, however, are fatal to the press itself, tending to alienate the minds of the fastest friends to its freedom, and to lead them to doubt whether its abuse were not greater than its use; till at last, instead of blessing its light, they come to consider it as a source of certain mischief and of doubtful good. Instead of confining public discussion to the characters of great men, and of public actions, the press is occupied in private scandal, and in ripping up the secret histories of humble individuals. It is no small hardship in the present case, too, that the defendants come into court after the judgment of several general libels; because, the subject of the libel being only stated, it is natural to conclude, that this is of the same species with that of which Mr. Cobbett, or Mr. Any-body-else has been convicted. The Attorney General has endeavoured, indeed, to draw a parallel between this case and that of Mr. Cobbett, in which it is unnecessary to follow him; for I trust I shall not proceed far before I shall have convinced you that the light is not more different from darkness, than the present case is from all and each of those that preceded it. The consequence, however, of all these prejudices is excessively hurtful to my case; and, indeed, I have to withstand a tide and torrent of prejudice directed now-a-days to almost every thing which comes in the suspicious shape of being printed. But I should not have counselled the present defendants to make a struggle to-day, unless their case had merits of an individual nature, and of such a nature as will, I trust, induce the court and the jury, to stretch forth their friendly hand to prevent them from utterly sinking. If I can shew that the intention of the defendants was good (whether it was laudable or not is another question,) then are they innocent and not blamable. In whatever light the composition may be considered critically, and as a piece of writing, although it be not an original article belonging to the paper, I am content to consider the defendants on the footing of its authors; and if you should not attribute guilty intentions to them as its composers, it will be your duty to acquit them. This will be the question you will have to decide; but at the same time, I will not disguise to you that you have now to try a far more important question—whether from this time an Englishman shall have the privilege of free

discussion, and, if discussion, of expression of his opinions against, as well as for any political measure, or statistical system. The present is not an instance of the canvass of individual character, of a particular error of policy, or abuse of system; (I do not deny that an Englishman has that privilege of discussion, too; but that it is not now the question;) the present question is as to his right of discussing a general, I had almost said, an abstract, question,—of giving his own opinion as to a particular cast of policy, which it has pleased the legislature to adopt. It is a question whether we have a right to endeavour to make that perfect, which we all so greatly admire; the constitution of our army; it is a question, whether a man, vehemently anxious for the glory of the army, may promote the good of the service, by shewing wherein its system is hurtful, and by pointing out those flaws which prevent its attainment of a greater degree of perfection. Upon the soldier's feelings of honour depend the safety of these kingdoms; and, with this consideration before him, is not that man the benefactor of his country who endeavours to refine those notions of honour to the uttermost pitch of perfection? These are the questions in this case; and these your verdict will decide. It is well known that for many years the attention of the legislature has been almost exclusively called to the importance of military policy. It is not necessary for me to go into a detail of all the plans which have been at different times proposed; it is sufficient to state, that all of them have had one object in view—that of bettering the condition of the soldier. To some of these plans it is, however, necessary that I should direct your attention. The first I shall mention is that of shortening the term of military service. Upon this subject, Sir Robert Wilson, whose presence in Court prevents me from saying, that, as there is not one officer in the service more distinguished for gallantry and skill, so there is none more distinguished by an ardent, almost amounting to a romantic, attachment to the profession of arms; not one in whom Buonaparté has a deadlier (I had nearly said a more personal) enemy, or this country and its allies a faster friend. This gallant officer, in the year 1804, published a tract upon the subject of improving and re-organising the military system. It was addressed to Mr. Pitt, whose attention was then directed to the subject; and men-

505]

tions, among a variety of causes operating to deter men from military enlistment, the length of the term of that enlistment. The writer is, perhaps, warm in much of his language; and I should have held that author cheap indeed, who could have touched upon such a subject with all the coldness of a regimental return. "Is not this enlistment for life," the gallant writer asks, "declaring to the world that the military service is so ungrateful, that it is necessary to secure the soldier, otherwise he would never stay in it?" He then talks of the liability to service in the West India Islands as another great drawback to enlistment. I may not agree with the writer in every one of his arguments; but God forbid that I should impute a libel to the gallant officer. He proposes that the West Indies should be given up: "that charnel-house," says he, "must be closed for ever against British troops." Did Sir Robert Wilson mean by all this to disincline the regiments already there, or about to embark thither, from the military service: Far be it from me to impute any such intention to him. This is the language of free discussion, and the gallant writer speaks warmly because he thinks strongly. Honour is the nature of the tenure by which the soldier holds his sword; and upon the subject of military punishments, the writer enters at once in language certainly not weaker than that of the publication before you. "The second and equally strong check to military enlistment," says he, is the frequency of military punishment. "The late Sir R. Abercrombie," he adds in a note, "was an enemy to it for light offences; and Lord Moira, and almost every General in the service, are universal enemies to it." And how is there any chance of subverting the system, unless, by facts and reasoning, the country and the legislature are convinced of its error? Sir Robert Wilson does not represent a picture of military punishment, too frightful as it is for patient examination; but he does say that there is no mode so disgraceful as that of punishment by flogging, and more inconsistent with the military character; and is justly severe when he sees that punishment, which should be awarded only to crimes of the blackest die, inflicted upon petty breaches of the military law. He attributes his early respect for the army to the circumstance of his having been educated in a regiment, in the fact of which the triangles were never

planted, and of which every man therefore walked erect and conscious of the dignity of a soldier. "There is no maxim, (he observes,) more true, than that cruelty is a mark of cowardice—humanity of bravery. To a commanding officer possessing the latter qualities, a thousand methods of commuting the punishment of flogging for a better mode of punishment would suggest themselves." He then proceeds to say, that if a return were made of the number of soldiers punished, the astonishment of the public would be excited; and relates an instance of an Irish Commander who once flogged 70 men in one day, and resumed the employment the next morning. "Corporal punishments (he concludes) never reform a corps; they break the soldier's spirit, without mending his disposition; the cat-o'-nine-tails defeats every end of punishment, only rendering the soldier despicable in his own eyes, and the object of opprobrium in those of others." I admit that this is a *topic of delicacy*; but it was the gallant officer's duty to touch upon it, from which, as an upright man, he was not deterred by the fear of having attributed to him motives, by which he was never actuated. He afterwards remarks the melancholy truth, that military punishments subdue every amiable disposition, and familiarize gentlemen by every right of education and birth, to scenes with which no other civilized nation is acquainted. "Why (he asks,) should England be the last to adopt the humane system? France allows of flogging only in her marine; and in no other country, save and except England alone, is that system constantly resorted to." It is not by the writings of Sir Robert Wilson only, that I defend the opinions of the paper before me: I have others on the same side; but I shall only mention one more, that of Brigadier General Stuart, the object of whose publication (dated 1806) is to shew the defects in our present military establishment, and to urge the necessity of its reform. "Without a radical change, (he says), the British army will never continue formidable abroad, and respected at home;" and he then mentions the very same defects, which are pointed out by Sir Robert Wilson. He too has recourse to that topic, which it seems no man can write upon this subject without adverting to—the system of France. The French soldiers, he says, are often shot, but seldom punished corporally; and in no service have I seen dis-

cipline preserved upon truer principles. Gentlemen, I like not an over-proneness to praise every thing French; but in men who have beaten the French, there is an additional merit in giving their adversaries their due praise; it adds the grace of liberality to the value of truth; it shews them to be above little petty paltry feuds, and that their way of fighting their enemies is in the field, and not by upbraidings. This gallant General has seen other service; he has served with Austrians, Russians, and Swedes; but in no service did he see discipline preserved on truer principles than in the French. Do I mean, Gentlemen, to argue from all this that because these gallant officers have done improperly, the defendants have a right to do so too? Do I know so little of your understandings, or have I so little regard for the interruptions of the learned judge, as to offer the absurd, the insane proposition, that the fault of one man excuses that of another? Did I bring forward one libel to screen another, that circumstance would be only an aggravation of the offence. No, Gentlemen; I quote the words of these gallant officers to you, because you and I must hold them incapable of sowing dissensions among their men, or deterring others from entering the army. Of all men in the country, there were no two who more eminently adorned their profession, or were more enthusiastically fond of it; and there cannot be a natural pretext for charging them with a libellous intention in the publication of their respective pamphlets; and it is, therefore, I argue, (with great submission to his Lordship) that if these gallant officers could publish what they had published without any libellous intention, the mere fact of the publication of my client's paper is no evidence of a libellous intention. With this statement of my argument, I shall now proceed to the consideration of the alledged libel itself. Upon its first motto, I shall not detain you long. Nothing surely can be made of a fashion, which has been the commonest device of an author, at least from the time of the Spectator; and it surely is too much, because a quotation is made from the Attorney General's speech upon a former trial, to implicate the quoter in the libel of which that was the trial. In case, then, it should be said that the present writer proceeded upon no facts, he collects a body of such facts, and places them at the head of his ar-

gument, as so much the stronger ground for agitating the question. It had been enough for his argument to have said, that "Corporal Curtis was sentenced to receive one thousand lashes;" but he fairly adds, "but, after receiving two hundred, was permitted to volunteer on foreign service;" and in the same spirit of candour, he states that the offence of William Clifford was that of "repeatedly striking and kicking his superior officer." It is thus through the article, he qualifies and guards his expressions, in the true temper of an impartial arguer. After some warm and vehement writing on the subject of these floggings, equally warm with that of Sir Robert Wilson, (and who should say the writer, feeling warmly, was not to express himself so?) he is afraid that his readers may be led into the mistake, into which it seems the Attorney-General has actually fallen, and therefore cautions them lest they should suppose he was too generally fond of French systems. [The learned Counsel then read the beginning of the second paragraph of the libel.] It has been objected, that the writer has not sufficiently guarded his military reader (supposing him to have one) from an idea that there was no difference between the English and the French military codes; but the writer expressly states that "Buonaparté imprisons his refractory troops, occasionally in chains; and in aggravated cases he puts them to death." Is this not stating both sides fairly? Is this keeping out of sight the severities of Buonaparté? Had the writer any reason to mention the French punishments? But though the conduct of his argument does not demand it, he admits that Buonaparté punishes with chains and death. Many of our first statesmen, on the agitation of the question, have maintained that the punishment of death should supersede that of flogging in our army; and it is not out of compassion to the soldier, that the argument in the paper before me is held, as much as to say to him, "Mutiny! that's right! You are liable to have your back tortured, and your revolt is justifiable!" The argument is, that the punishment of death is less horrible and disgraceful than that of whipping; and the writer's address to the soldier is, "don't think you are to get off for your offences; my notion is, that instead of being flogged, you should be chained for life, or put at once to death." The writer's tenderness was exercised towards the military character

in general, and not to the soldier in particular; and, instead of exciting them to mutiny, he addressed them in the language of severity; he was aware of the strictness necessary in military discipline, and where others would flog he would shoot the soldier. "We despise and detest those who would tell us, that there is as much liberty now enjoyed in France, as there is left in this country." Is this the language of him who would fix the eye of blame only upon what happens at home? The whole gist of the argument is, that the French discipline being superior to ours, as Sir Robert Wilson and Gen. Stuart had testified it was, we ought to suffer ourselves in that particular to be taught even by our enemies. The topic of comparison with the French, delicate as it is, was necessary to his argument, which could not be conducted without it. At the same time he guards his reader against any erroneous impression which the preference he was compelled to give in this comparison might make upon him; and I pray you, gentlemen, not to be led away by any appearance of warmth or violence, with which his remarks may be made. He might have made these remarks without the qualification which he has annexed to them, and yet I should not have been afraid of his defence; he has qualified them, and his defence is sure. The points he has urged, he had a right to press, unless free discussion mean a free choice of topics, but a fettered use of them, a selection of subject, but a restriction of language. If there is one subject upon which we may be allowed to think more strongly than another, it is the present; and every body above the level of a stock or a stone will write in proportion to his feelings on this subject. If he have not the power to do this, to what is the privilege of discussion reduced? To something like a free selection of what another prescribes—to a rule eaten up with exceptions; and he who tells you you have the privilege, has either a small acquaintance with the language, or a slight regard to truth. The present writer has stated facts; a system itself is impeached, and it is part of his argument that that system leads to unavoidable cruelty, and cruelty which cannot fail to be exercised. He who has a right to hold this opinion, has a duty to communicate it; and as for the fear of exciting mutiny in the soldiers, it is idle and chimerical. But laying out of your view, gentlemen,

my former argument and the high authorities upon which I grounded, namely, that evil intention was no more imputable to my clients, than to the gallant officers I have quoted to you, is there any visible limit to the Attorney-general's argument? Is there any safe subject for discussion, if we are to be told that our arguments tend to excite revolt? What are the most common of all political subjects? Taxes, wars, and expeditions. If I object to the imposition of taxes, the Attorney-general says to me, "what are you about? you are exciting a resistance of the imposts of your country. Can any thing be more dangerous?" If I were to complain that our expeditions send armies to perish, not by the sword of the enemy, but by the yellow fever; not by the cannon, but by the pestilence of Walcheren, would any body dream that my intention was to excite mutiny? Must an Englishman have the privilege of Parliament before he can discuss public measures? Was such a thought ever entertained? I shall only advert to one other subject; I mean, the eloquent efforts which were made on behalf of the West India slaves. Could there be a more delicate subject than that, or one which required to be more cautiously handled? Were not all the masterly speeches of Mr. Pitt on that subject, pictures of horrors from beginning to end; and did any one impute a wish to excite insurrection in him, although he was addressing islands peopled with blacks? This privilege, if it is good for any thing, is good for all; and I have a right to discuss any subject. But is there no danger of mutiny to be apprehended from the infliction of these military floggings, in the sight and hearing of thousands of soldiers and peasantry, although the danger which the mere narrative of them is to produce be great? Is this fund of peasantry, out of which your future soldiers are to be drawn, to hear with their own ears, and see with their own eyes, the horrors of a military flogging without thinking twice before they enter this army? All this is a chimerical fear; let their eyes feast on the sight, let their ears be glutted with the sound; all is safe, there is no fear of their being moved; but have a care how you describe or comment upon all this (we have scarcely and very inadequately done either the one or the other), but of all things take care how you argue on the policy of this system; for a single word of

argument will occasion those troops to revolt, and that peasantry to turn their attention to some other way of life, who saw and heard a military flogging with the coolest satisfaction. Gentlemen, I have done; the whole case is before you; and you will now decide, whether an Englishman has any longer the privilege of discussing public measures."

The ATTORNEY-GENERAL replied: he agreed with the Learned Gentleman in his remarks upon the licentiousness of the press; and perhaps it fell more in the Attorney-General's way than in that Gentleman's to know the number of weak nerves which were affected by this dread of libel. It was now a question with publishers, not whether this or that line of opinion was the result of their conviction, but whether it would sell their paper best, and the Court had an affidavit to this effect upon its records, (alluding to the late case of *The Day newspaper*.) It had been said, that this was a free and liberal discussion of a public measure; and that its arguments were justified by the example of two gallant officers: but to rank Sir Robert Wilson, and Brigadier-General Stuart, with the proprietors of the *Examiner*, was laughable. It might be a question whether it was adviseable in these officers to make their thoughts on the army (which the Attorney-General had not before seen) public, when they had a private opportunity of communicating them where they might have been more efficacious; and it might be also a question whether it was prudent in one of these gallant officers to enlarge upon the corporal punishment of the soldiery, in such ardent and glowing language. But the officers could have no other object in view. Not so the defendants; and the question was, what was the object of Messrs. Hunt, Proprietors of the *Examiner*? He protested against any invasion of the liberty of the press.

Lord ELLENBOROUGH then charged the Jury. It had been stated by the Counsel for the defendant, in a speech of great ability, eloquence and manliness, that the question was, whether it were lawful to an Englishman to comment on any particular policy. Of this there could be no doubt, and that whether privately or through the press, provided it were done decently and with a true regard to public and private interests. This was an anxious and awful moment,

when the personal liberty of every man depended upon our resistance to Buonaparté, and all the powers of Europe who were combined with that formidable foe. It therefore became doubly necessary to see that he had no auxiliary from within us, and that he had not the aid to his ambitious tyranny of the British press. The freedom of discussion was in proportion to its delicacy; and he could not help thinking, that the gallant officer on the Bench would have done better to have made a communication of his sentiments in a more private form. The soldiery were now a class of men upon whose fidelity to the banners of their country every thing depended; and it could not be supposed that the subject of their punishment had not undergone the consideration of those who were supposed to be full of all honourable feeling.—His lordship then read, and commented upon, the libel. The title, "One thousand lashes," was printed in capitals to catch the eye; and the lashes were in one instance added together, and not apportioned to each offence, for the purpose of aggravation. The words, "with their usual consistency," were a fling at the country. Was this fair discussion? Do we use force to recruit our armies? The duty of being balloted for militias played upon every body alike, with certain exceptions; and yet it was meant to be represented that equal force was used in recruiting our army with what was employed in France, where every man was drawn out and sent from Holland to Spain, fighting for a territory to which he had no title, and merely subserving the views of a tyrant. By the French Code of Conscription, the punishments inflicted on those relatives who concealed objects of conscription were truly horrible; they were condemned to linger out their lives in the galleys, and to other severities. If the writer had been really actuated by a feeling for the soldiery, why did he not make a private representation to some member of the legislature, instead of drawing a picture calculated to harrow up the souls of his readers, and to attract the attention of the military, and render them disgusted with the service. In the conscientious discharge of his duty, his Lordship had no hesitation in pronouncing this a seditious libel.

The Jury, after some consultation, withdrew for an hour and an half, and then returned their verdict—NOT GUILTY.